

§ 2035. Mechanical Restraint Policy for Board of Parole Hearings.

CALIFORNIA CODE OF REGULATIONS
Title 15. Crime Prevention And Corrections
Division 2. Board of Parole Hearings
Chapter 1. General
Article 4. Public Participation.

§ 2035. Mechanical Restraint Policy for Board of Parole Hearings.

(a) This regulation establishes uniform rules applicable to all hearings conducted under the authority of the Board of Parole Hearings (BPH or Board), including hearings that are held at adult California Department of Corrections and Rehabilitations (CDCR) institutions, and hearings held outside of CDCR jurisdiction (city and county detention facilities). The policies shall be implemented to ensure consistency in the use of restraints in hearings at all CDCR institutions and to ensure that all necessary precautions are taken to provide safe hearings for all hearing panel members and witnesses.

(b) Consistent with the policies and procedures outlined below, the institution Classification and Parole Representative, Correctional Counselor III, Parole Agent III (return-to-custody facilities) or authorized designee shall determine which prisoners require restraint. Such determination shall be based on a review of all available documentation to include: information reflected in parole violation reports and in-custody misconduct reports, CDCR 115s, information provided by correctional personnel, requests by civilian witnesses that a prisoner be restrained and/or a determination by the BPH hearing officer(s) that the restraints are required based on these criteria.

(c) General Policies.

(1) Definition of Mechanical Restraints. Mechanical restraints are defined as waist chains with handcuffs on the side, with approximately a three-inch lead chain to the cuff, allowing the prisoner limited movement of the hands to read and handle material necessary to the hearing. Leg restraints, regardless of the type of hearing, will only be utilized in those cases which demonstrate the greatest potential for violence.

(2) Body Search. In all cases, the prisoner shall receive a clothed body search prior to entry into a hearing room.

(3) Room Configuration/Security. Institutions shall ensure, to the extent practical, that hearing rooms contain an operational alarm system and are configured in a manner promoting separation of the prisoner from the hearing panel and witnesses by double tables. Institutions shall ensure, to the extent practical, that hearing rooms shall afford an immediate and unobstructed exit access from the room in proximity to areas staffed with additional peace officers available to respond to emergencies, if required. Institutions shall ensure, to the extent practical, that hearing rooms shall be searched daily for contraband.

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(4) Life Prisoners.

(A) Unrestrained Life Prisoner. Life prisoners will be unrestrained provided at least two, uniformed correctional officers are present in the hearing room.

(B) Restrained Life Prisoner. Life prisoners will be restrained when victims or victims' next of kin are present.

(5) Parole Violation Hearings.

(A) Hearings held in CDCR institutions.

(i) Parole violators coming from restricted housing units (i.e., administrative segregation, security housing, protective custody) and those from psychiatric wards shall be in restraints.

(ii) CDCR hearing staff shall also determine if restraints should be used in cases where the prisoner demonstrates or verbalizes a potential threat to the hearing panel and/or participants, including witnesses.

(iii) Final authority regarding the use of restraints (except in cases where the prisoner communicates via sign language as indicated in subsection (6) below) shall rest with the Deputy Commissioner conducting the hearing. Staff disputes regarding use of restraint shall be immediately referred to the supervising Associate Chief Deputy Commissioner (ACDC) by telephone. In the absence of the ACDC, the Chief Deputy Commissioner shall resolve the matter. Pending resolution of the matter, the inmate/parolee will remain in restraints.

(B) Hearings held Outside of CDCR Jurisdiction (City and County Detention Facilities). Department Operations Manual (DOM) Sections 84070.3-84070.3.1 shall govern security at revocation and revocation extension hearings held outside of CDCR facilities.

(6) Special Provisions for Inmates/Parolees Who Communicate Via Sign Language. Hearing-impaired prisoners and parolees who need sign language interpreters shall not have their hands and arms restrained in any way during the hearing, unless a written determination is made on an individualized basis that the prisoner or parolee would pose a threat if unrestrained. However, the inmate/parolee may have leg restraints applied at the discretion of the Commissioner or Deputy Commissioner to provide minimal safety and protection for the hearing participants. The Chairman of the BPH or his or her delegate (Executive Officer in the case of a life prisoner and Chief Deputy Commissioner in the case of a non-life inmate or parolee) shall personally approve the use of restraints in each instance prior to their use. If the Commissioner or Deputy Commissioner believes that use of mechanical restraints is necessary, the Commissioner or Deputy Commissioner shall not be required to commence the hearing until the matter has been presented to the Chairman or his or her delegate and he or she has either personally approved or disapproved the use of restraints. In the case of non-life hearings, the required written determination shall consist of the Deputy Commissioner

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documenting the decision in the written and taped record of the hearing. In the case of life prisoner hearings, the written documentation shall be indicated on a BPH Form 1082, Continuation Sheet, and made a permanent record in the BPH section of the prisoner's central file.

(7) Application of Restraints at Time of Panel Findings. Immediately prior to announcing the panel findings at a non-life hearing for a non-restrained prisoner who communicates via sign language, the Commissioner or Deputy Commissioner shall order the normal recess, at which time CDCR staff shall be requested to place the inmate or parolee in mechanical restraint before he or she returns to the hearing room.

Note: Authority cited: Section 5076.2, Penal Code.

Reference: Sections 2962, 2964, 2966, 3041, 3056, 3060 and 5076.1, Penal Code; *Armstrong v. Schwarzenegger*, U.S.D.C. N. Dist. Cal. Case No. C94-2307 CW; *In re Martin*, Sacramento Superior Court Case No. 03F10202.